

**IN THE UNITED STATES COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**BEVERLY SIMMONS-WADE**

**v.**

**JO ANNE B. BARNHART**, *Commissioner of the  
Social Security Administration*

**: CIVIL ACTION**

**:**

**: NO. 05-CV-5382**

**:**

**:**

**:**

**MEMORANDUM AND ORDER**

**Kauffman, J.**

**October 31, 2006**

Plaintiff Beverly Simmons-Wade (“Plaintiff”) seeks judicial review of the final decision of the Commissioner of the Social Security Administration, Jo Anne B. Barnhart (“Commissioner”), denying her claim for disability insurance benefits (“DIB”) and Supplemental Security Income (“SSI”) under Titles II and XVI of the Social Security Act (the “Act”), 42 U.S.C. §§ 401-433 and 1381-1383h prior to October 10, 2003. Plaintiff and the Commissioner have filed cross motions for summary judgment. United States Magistrate Judge Linda K. Caracappa has submitted a Report and Recommendation, see 28 U.S.C. § 636(b)(1)(B); Local R. Civ. P. 72.1(d)(1)(C), recommending that the Court grant the Commissioner’s Motion.

Because Plaintiff has objected to the Magistrate Judge’s Report and Recommendation, this Court must “make a de novo determination of those portions of the record or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1)(C). Having reviewed the Report and Recommendation and the objections thereto, the Court will approve and adopt the Report and Recommendation.

**I. Procedural History**

Plaintiff first filed an application for SSI on April 16, 2002. R. at 22. On April 26, 2002, she also filed an application for DIB. Id. Her claims were denied initially and she requested a

hearing before an Administrative Law Judge (“ALJ”). The hearing was held on July 24, 2003, and Plaintiff, represented by counsel, testified on her own behalf. R. at 22, 318-336. On August 18, 2003, the ALJ issued an opinion finding that Plaintiff was disabled as of August 17, 2002. R. at 37-42. Plaintiff sought review of the ALJ’s determination of her disability onset date. The Appeals Council granted Plaintiff’s request for review, vacated the ALJ’s entire decision, including the part favorable to her, and remanded the case for further proceedings. R. at 63-66.

On remand, the ALJ conducted another hearing on August 20, 2004, at which Plaintiff, represented by counsel, testified along with a vocational expert. R. at 337-355. On September 27, 2004, the ALJ issued a new opinion concluding that Plaintiff was entitled to a period of disability commencing October 10, 2003, but not prior thereto. R. at 31. In support of his opinion, the ALJ found that Plaintiff has the “medically determinable severe impairments: atrial fibrillation, asthma, depression, and Graves [sic] Disease.” R. at 23. The ALJ further found that although Plaintiff was unable to perform the requirements of her past work from May 2, 2001 through October 9, 2003, she retained the ability to do sedentary work during that period. R. at 30. Applying the Medical Vocational Guidelines liberally in Plaintiff’s favor, the ALJ concluded that based on her capacity for sedentary work, her age, her education, and her work experience, she was disabled as of October 10, 2003, even though she would not reach the age of fifty until April 10, 2004.<sup>1</sup> Id.

The Appeals Council denied Plaintiff’s request for review on September 13, 2005. R. at

---

<sup>1</sup> The Medical Vocational Guideline directs a finding of “not disabled” for individuals aged 44-49 who have limited high school education with no transferable skills and who are limited to sedentary work. See 20 C.F.R. pt. 404, subpt. P, app. 1, § 201.21. However, if an individual is within a few days to a few months of reaching an older category, the ALJ may elect to use the older age category. See 20 C.F.R. §§ 404.1563(b), 416.963(b).

6-8. Having exhausted her administrative remedies, Plaintiff commenced this action.

## **II. Standard of Review**

### **A. The Commissioner's Decision**

Judicial review of a Social Security case is based upon the pleadings and the transcript of the record. 42 U.S.C. § 405(g). The scope of the Court's review of the Commissioner's decision is limited to determining whether the Commissioner applied the correct legal standards and whether the record, as a whole, contains substantial evidence to support the Commissioner's findings of fact. See Fargnoli v. Massanari, 247 F.3d 34, 38 (3d Cir. 2001); Knepp v. Apfel, 204 F.3d 78, 83 (3d Cir. 2000).

"The Court is bound by the ALJ's findings of fact if they are supported by substantial evidence in the record." Plummer v. Apfel, 186 F.3d 422, 427 (3d Cir. 1999). "Substantial evidence 'does not mean a large or considerable amount of evidence, but rather such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" Hartranft v. Apfel, 181 F.3d 358, 360 (3d Cir. 1999) (quoting Pierce v. Underwood, 487 U.S. 552, 565 (1988)); see also Plummer, 186 F.3d at 427 (noting that "substantial evidence" has been defined as "more than a mere scintilla"). The standard is "deferential and includes deference to inferences drawn from the facts if they, in turn, are supported by substantial evidence." Schaudeck v. Comm'r of Soc. Sec. Admin., 181 F.3d 429, 431 (3d Cir. 1999). In sum, "[t]he court cannot conduct de novo review of the Commissioner's decision or re-weigh the evidence of record." Palmer v. Apfel, 995 F. Supp. 549, 552 (E.D. Pa. 1998).

### **B. The Magistrate Judge's Report and Recommendation**

The Court, however, must engage in a de novo review of those portions of the Magistrate

Judge's Report and Recommendation to which Plaintiff has objected. See 28 U.S.C. § 636(b)(1)(C). The Court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate." Id. In considering Plaintiff's objections to the Report and Recommendation, the Court has independently reviewed the entire record, including the Report and Recommendation, both of the ALJ's decisions, the transcripts for both hearings, the hearing exhibits, and the summary judgment briefs.

### **III. Social Security Law**

Title XVI of the Act provides for the payment of disability benefits to indigent persons under the Supplemental Security Income program. See 42 U.S.C. § 1382(a). "Disability" is defined as an inability "to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 1382c(a)(3)(A). The Act further provides:

An individual shall be determined to be under a disability only if [her] physical or mental impairment or impairments are of such severity that [she] is not only unable to do [her] previous work but cannot, considering [her] age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which [she] lives, or whether a specific job vacancy exists for [her], or whether [she] would be hired if [she] applied for work. For purposes of the preceding sentence (with respect to any individual), 'work which exists in the national economy' means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

42 U.S.C. § 1382c(a)(3)(B). The plaintiff carries the initial burden of proving disability. See Plummer, 186 F.3d at 428. Once the plaintiff establishes an inability to perform her prior work, the burden then shifts to the Commissioner to show that the plaintiff can perform other

substantial gainful work that exists in the national economy. Id.

Under the Social Security regulations, an application for disability benefits is evaluated according to a five-step sequential process. See Bowen v. Yuckert, 482 U.S. 137, 140-42 (1987); 20 C.F.R. § 416.920. This process requires the presiding ALJ to review: (1) the plaintiff's current work activity; (2) the severity of the impairments; (3) whether the impairments, considered alone or in combination, meet or equal any listing set forth in 20 C.F.R. 404, Subpart P, Appendix 1, which would result in a conclusive presumption of disability; (4) whether the plaintiff's residual functional capacity ("RFC") allows her to perform her past relevant work; and, if not, (5) whether the plaintiff's specific RFC, in conjunction with a consideration of her age, education, and work experience, prevents her from performing other work that exists in the national economy. A plaintiff is entitled to disability benefits only if she is not able to perform such other work.

#### **IV. The ALJ's Decision**

Using the sequential evaluation process, the ALJ determined that Plaintiff had satisfied the requirements of the first step because she had not engaged in any substantial gainful activity since May 2, 2001. See R. at 30, Finding No. 1. The ALJ then found that, while Plaintiff suffers from the severe impairments of atrial fibrillation, asthma, Graves' Disease, and depression, these impairments do not meet or medically equal any of the impairments listed in 20 C.F.R. 404, Subpart P, Appendix 1. See id. at Finding Nos. 2, 3.

The ALJ went on to find that although Plaintiff had been unable to perform the requirements of her past work since May 2, 2001, she had the RFC to perform sedentary work activities for the period May 2, 2001 through October 9, 2003. See id. at Finding Nos. 5, 6. The

ALJ further found that Plaintiff's allegations regarding her limitations generally were credible for the period after October 10, 2003, and that, as of that date, she "was closely approaching advanced age." See id. at Finding Nos. 4, 7. Based on Plaintiff's RFC, her age, her education, and her work experience, the ALJ concluded that Plaintiff was disabled under medical-vocational rule 201.14 as of October 10, 2003, but not prior to that date. See id. at Finding No. 10.

## **V. The Magistrate Judge's Report and Recommendation**

In her Report and Recommendation, Magistrate Judge Caracappa, based on Plaintiff's medical records, the vocational expert's testimony, and Plaintiff's own statements, found that the ALJ's conclusions were supported by substantial evidence.

## **VI. Analysis**

Plaintiff objects to Magistrate Judge Caracappa's Report and Recommendation on two grounds. First, she contends that both the ALJ and the Magistrate Judge failed to discuss all the evidence in the record related to her Graves' disease and heart condition. See Objections at p. 4. Second, she argues that the Magistrate Judge did not address "the ALJ's failure to discuss the impact of [Plaintiff's] fatigue on her ability to perform work activity on a regular and continuing basis and the resulting job erosion." Id. Following a de novo review, this Court concurs with Magistrate Judge Caracappa's conclusion that the ALJ's decision was supported by substantial evidence.

### **A. Plaintiff's Limitations Due to Graves' Disease and Her Heart Condition**

Contrary to Plaintiff's assertion, the ALJ did consider the evidence related to her Graves' disease and heart condition. At the outset of his opinion, the ALJ states that "[Plaintiff] has the following medically determinable severe impairments: atrial fibrillation, asthma, depression and

Graves [sic] Disease. [Plaintiff] was hospitalized with atrial fibrillation in May 2000, June 2000, and January 2002.” R. at 23. The ALJ also notes that Plaintiff “has been treated for Grave’s [sic] disease, diagnosed in 2001. In February 2002, she described fatigue and cold intolerance, and she was started on Synthroid.” Id. Later in his opinion, the ALJ again references her Graves’ disease and heart condition, noting that Plaintiff “was treated for Graves’ disease and as part of the medical treatment she did receive radioactive iodine treatment. Medical reports from Lenox Hospital dated January 3, 2002, indicate that [Plaintiff] had suffered with atrial fibrillation several times in the preceding months.” R. at 26. At no point in his opinion does the ALJ suggest that he disregarded these impairments or the medical reports describing treatments Plaintiff received for them.

Furthermore, the ALJ also considered evidence regarding the results of a medical exam conducted by Dr. Babu Joseph during the relevant time period. Following a May 23, 2002 exam, Dr. Joseph determined that Plaintiff suffers from Graves’ disease (among other impairments), and concluded that Plaintiff’s ability to perform work-related activities was restricted as follows: “walking is moderately restricted, prolonged standing is mildly restricted, there are no limitations on her ability to sit; while her ability to carry, lift, push, and pull is moderately limited.” R. at 24. The ALJ explicitly stated that he accorded substantial weight to Dr. Joseph’s assessment of the impact of Plaintiff’s impairments based on the supporting medical evidence in the record. Id. Accordingly, Plaintiff’s assertion that the ALJ did not discuss evidence regarding her Graves’ disease and heart condition is unfounded. See Briggs v. Commissioner of Social Security, 137 Fed.Appx. 462 (3d Cir. 2005) (finding that ALJ satisfied duty under Cotter v. Harris, 642 F.2d 700, 705 (3d Cir.1981), by considering all relevant medical sources).

**B. The Impact of Plaintiff's Fatigue on Her Ability to Perform Work**

There is also substantial evidence in the record indicating that the ALJ considered Plaintiff's claims regarding the impact that fatigue had on her ability to perform work activities. In addition to considering the testimony of Dr. Joseph (discussed above), the ALJ considered statements that Plaintiff herself made regarding the effects her impairments had on her daily life. In a February 15, 2002 report, Plaintiff indicated that she was able to take medications without assistance, take care of her son, utilize public transportation, shop regularly, clean, cook, venture outside her home at least three times a week, read, watch television, and talk with friends and relatives on the phone. R. at 26. In a July 24, 2002 report, Plaintiff indicated that she showers each day, gets her son off to school, makes her bed and performs other housework, goes to doctor's appointments, and visits with her family. Id. Although Plaintiff indicated that she was not able to walk more than half a block without getting winded, the ALJ found this claim to be less than credible. Id. The ALJ explained that Plaintiff's own statements regarding her daily activities, statements made by Plaintiff's daughter in August of 2002 regarding her mother's daily activities, and the medical evidence in the record for that period of time, indicated that Plaintiff's claim that she could only walk half a block was not credible for the time period prior to October 10, 2003. Id.

The ALJ also considered medical reports prepared by physicians at the Disability Determination Service ("DDS"). The DDS concluded in a September 12, 2002 report that Plaintiff was capable of performing light work activity based on evidence in the record at the time. R. at 27. However, after reviewing evidence gathered since that time, the ALJ independently concluded that Plaintiff had been more limited since May 2, 2001 than the DDS



examiners had determined and had, in fact, been able to perform only sedentary type work activity. R. at 28. In reaching this conclusion, the ALJ noted that although he could not fully credit Plaintiff's statements that she could only walk half a block, "it does appear that she has been unable to engage in prolonged walking since May 2001. The claimant's ability to function in the work place is also affected by her inability to work around fumes, odors, dusts, gases and poor ventilation. Her ability to function in the workplace is further eroded by her occasional limitations against engaging in climbing, balancing, stooping, kneeling, and crouching." Id.

Finally, Plaintiff also asserts that the ALJ improperly failed to include Plaintiff's fatigue in his hypothetical to the Vocational Expert ("VE"). As Magistrate Judge Caracappa noted in her Report and Recommendation, an ALJ's hypothetical questions to a VE must include all the limitations supported by the record. Chrupcala v. Heckler, 829 F.2d 1269, 1276 (3d Cir. 1987). As discussed above, the ALJ found that Plaintiff was limited to sedentary work, but did not find her allegations regarding limitations due to fatigue to be credible. Therefore, the ALJ's hypothetical to the VE limited Plaintiff to sedentary work. R. at 353-54. Since the Court finds that substantial evidence supports the ALJ's finding that Plaintiff was capable of engaging in sedentary work during the relevant time period, his hypothetical to the VE properly reflected the limitations that were supported by the record.

## **VII. Conclusion**

The ALJ's decision that Plaintiff was entitled to benefits as of October 10, 2003, but not prior thereto, was supported by substantial evidence in the record, as affirmed by the Magistrate Judge's Report and Recommendation. Accordingly, Plaintiff's Objections are overruled and the Commissioner's Motion for Summary Judgment will be granted. An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>BEVERLY SIMMONS-WADE</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	<b>NO. 05-CV-5382</b>
	:	
<b>JO ANNE B. BARNHART, <i>Commissioner of the</i></b>	:	
<b><i>Social Security Administration</i></b>	:	

**ORDER**

**AND NOW**, this     31st            day of October, 2006, the Court having considered the parties' Motions for Summary Judgment and reviewed the Report and Recommendation of United States Magistrate Judge Linda K. Caracappa, Plaintiff's Objections thereto, and the entire record, including the ALJ's decisions, transcripts of the hearings, and hearing exhibits, it is

**ORDERED** that:

1.     The Report and Recommendation (docket no. 11) is **APPROVED** and **ADOPTED**;
2.     Plaintiff's Motion for Summary Judgment (docket no. 7) is **DENIED**;
3.     Defendant's Motion for Summary Judgment (docket no. 8) is **GRANTED**; and
4.     The Clerk of Court shall mark this case **CLOSED**.

**BY THE COURT:**

/s/ Bruce W. Kauffman

**BRUCE W. KAUFFMAN, J.**